

# **PUBLIC SAFETY DEPARTMENT[661]**

## **Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code sections 17A.3 and 321.4, the Department of Public Safety hereby gives Notice of Intended Action to rescind Chapter 91, “Weapons Permits,” and adopt new Chapter 91, “Weapons and Iowa Professional Permits to Carry Weapons,” Iowa Administrative Code.

Iowa Code chapter 724 establishes a system of permitting for persons in Iowa to carry weapons. The Department of Public Safety is assigned the duties of designating as collector’s items certain firearms that are classified as offensive weapons, issuing professional permits to carry weapons to state employees whose need to go armed is part of their job duties and to nonresidents of Iowa whose need to go armed is based on their employment, and publishing the forms for the issuance of Iowa permits to carry weapons and permits to acquire handguns.

Major changes to Iowa Code chapter 724 were enacted by the 83rd Iowa General Assembly in 2010 Iowa Acts, Senate File 2379 and Senate File 2357. The amendments proposed herein update the provisions regarding the Commissioner’s issuance of carry permits while retaining and updating rules regarding the publishing of forms and the designation of certain firearms as collector’s items.

A public hearing will be held on October 13, 2010, at 10 a.m. in the First Floor Public Conference Room, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines. Any interested person may speak at the public hearing or may submit written comments to the Agency Rules Administrator at the public hearing; by regular mail to Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319; by fax to (515)725-6195; or by electronic mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us). Written comments should be submitted no later than 4:30 p.m. on October 13, 2010.

Administrative rules of the Department of Public Safety are subject to the waiver provisions of rule 661—10.222(17A), which sets out specific criteria and procedures for waivers of rules. The Department is unable to waive any requirement established as mandatory by statute.

This amendment is intended to implement Iowa Code chapter 724 as amended by 2010 Iowa Acts, Senate File 2379 and Senate File 2357.

The following amendment is proposed.

Rescind 661—Chapter 91 and adopt the following **new** chapter in lieu thereof:

### **CHAPTER 91**

### **WEAPONS AND IOWA PROFESSIONAL PERMITS TO CARRY WEAPONS**

**661—91.1(724) Definitions.** The following definitions apply to rules in this chapter:

*“Addicted to the use of alcohol”* means a person who uses alcohol and has lost the power of self-control with reference to the use of alcohol. Such use is not limited to the use of alcohol on a particular day, or within a matter of days or weeks before, but rather that the use has occurred recently enough to indicate that the individual is actively engaged in such conduct. A person may be addicted to the use of alcohol even though the alcohol is not being used at the precise time the person applies for an Iowa permit to carry weapons or during the validity of the permit. An inference of addiction to the use of alcohol may be drawn from evidence of a recent use of alcohol or a pattern of use that reasonably covers the present time, e.g., voluntary or involuntary committal to any inpatient or outpatient alcohol treatment program in the past three years; two or more arrests, one of which resulted in a conviction, for unlawful use or possession of alcohol or other criminal act committed while under the influence

of alcohol in the past year; three or more arrests, one of which resulted in a conviction, for unlawful use or possession of alcohol or other criminal act committed while under the influence of alcohol in the past five years if the most recent arrest occurred in the past year; disciplinary action taken by any employer or organization for prohibited use or possession of alcohol or alcohol rehabilitation failure in the past year; a test of a person's bodily fluid that indicates the person to have engaged in unlawful acts involving alcohol, provided that the test was administered within the past year; or other pattern of conduct that a reasonable person would believe indicates addiction to the use of alcohol.

*"Adjudicated as a mental defective"* means a determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:

1. Is a danger to the person's self or to others; or
2. Lacks the mental capacity to contract or manage the person's own affairs.

The term shall include:

- A finding of insanity by a court in a criminal case; and
- Those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility.

*"Applicant"* means a person who is applying for a permit to carry weapons.

*"Background check"* means an inquiry through the IOWA system to NICS, the IOWA and the National Crime Information Center (NCIC) systems person files and the driver's license file of the applicant as well as other available sources of information to be used to determine eligibility.

*"Commissioner"* means the commissioner of the Iowa department of public safety or, as applicable, the commissioner's designee.

*"Committed to a mental institution"* means a formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily either as an inpatient or outpatient. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug or alcohol abuse. The term does not include admission to a mental institution for observation or a voluntary admission to a mental institution.

*"Crime punishable by imprisonment for a term exceeding one year"* means any federal, state or foreign offense for which the maximum penalty, whether or not imposed, is capital punishment or imprisonment in excess of one year. The term shall not include any federal or state offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices or any state offense classified by the laws of the state as a misdemeanor and punishable by a term of imprisonment of two years or less. What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction unless such pardon, expunction, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms, or unless the person is prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms.

*"Felony"* means any crime punishable by imprisonment for a term exceeding one year as defined in these rules or any crime involving a firearm or explosive that is punishable by imprisonment for a term exceeding one year and is classified as a misdemeanor under the laws of this state.

*"Firearm training documentation"* means a photocopy of a certificate of completion or any similar document indicating completion of any firearm training program course; an affidavit from the instructor, school, organization or group that conducted or taught a firearm training program; a copy of or the display of an honorable discharge or general discharge under honorable conditions or Form DD-214 for personnel released or retired from active duty with the armed forces of the United States; or possession of a certificate of completion of basic training with a service record of successful completion of small arms training and qualification for active duty personnel in the armed forces of the United States. For a renewal application, firearm training documentation also includes documentation of qualifying on a firing range under the supervision of an instructor certified by the National Rifle Association or the Iowa

law enforcement academy or another state's department of public safety, state police department, or similar certifying body.

*"Firearm training program"* means any National Rifle Association handgun safety training course; any handgun safety training course available to the general public utilizing instructors certified by the National Rifle Association or the Iowa law enforcement academy or another state's department of public safety, state police department, or similar certifying body; any handgun safety training course offered for security guards, investigators, special deputies, or any division or subdivision of a law enforcement or security enforcement agency approved by the Iowa department of public safety; or completion of small arms training while serving with the armed forces of the United States. Any person or entity seeking approval by the Iowa department of public safety for a handgun safety training course offered for security guards, investigators, special deputies, or any division or subdivision of a law enforcement or security enforcement agency, other than those certified by the National Rifle Association or the Iowa law enforcement academy or courses conducted by instructors certified by the National Rifle Association or the Iowa law enforcement academy, shall submit a detailed description of the course content to the commissioner for review. Any handgun safety training course submitted for review shall be reviewed by the commissioner to determine if the course is substantially equivalent to the Iowa law enforcement academy marksmanship qualification course.

*"Identification documentation for an Iowa resident"* means any of the following:

1. A driver's license or nonoperator identification card that contains a photograph of the person and that has been issued by the Iowa department of transportation; or
2. A motor vehicle license or nonoperator identification card that contains a photograph of the person and that has been issued by a state other than Iowa and at least one current document indicating Iowa residency, including a residential lease agreement, utility bill, voter registration, tuition receipt for a college or university in Iowa, or other documentation that is acceptable to the officer issuing the permit and that indicates the intent of the person's presence in Iowa is something other than merely transitory in nature; or
3. A document which contains the name, place of residence, date of birth and photograph of the holder issued by or under the authority of the United States, a state or a political subdivision of a state and which is of a type intended or commonly accepted for the purpose of identification of individuals and at least one current document indicating Iowa residency, including a residential lease agreement, utility bill, voter registration, tuition receipt for a college or university in Iowa, or other documentation that is acceptable to the officer issuing the permit and that indicates the intent of the person's presence in Iowa is something other than merely transitory in nature; or
4. A motor vehicle license or nonoperator identification card that contains a photograph of the person and that has been issued by a state other than Iowa and a document indicating that the person is a member of the United States armed forces on active duty and whose permanent duty station is located in Iowa; or
5. A driver's license or nonoperator identification card that contains a photograph of the person and that has been issued by the Iowa department of transportation and an immigration document containing the alien registration number (ARN) of a permanent resident alien or nonimmigrant alien and documentation indicating that the person has resided in the state for at least 90 consecutive days prior to the person's making application. A nonimmigrant alien shall also be required to display a valid hunting license issued in any state.

*"Identification documentation for a nonresident"* means a motor vehicle license or nonoperator identification card which has been issued by a state other than Iowa and which contains a photograph of the person to whom it was issued.

*"IOWA system"* means the Iowa on-line warrants and articles criminal justice information system operated by the Iowa department of public safety for use by law enforcement and criminal justice agencies in the exchange of criminal history and other criminal justice information.

*"Misdemeanor crime of domestic violence"* means an offense that:

1. Is a misdemeanor under federal or state law; and

2. Has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

*“New application”* means an application for an Iowa professional permit to carry weapons that is filed when the applicant does not currently hold an Iowa permit to carry weapons or when the applicant does not file the application at least 30 days prior to the expiration of a currently held Iowa permit to carry weapons.

*“NICS”* means the National Instant Criminal Background Check System established by the United States Attorney General pursuant to United States Code 18 U.S.C. § 922(t).

*“Professional permit to carry weapons”* means a permit to carry weapons issued to a person whose employment in a private investigation business or private security business licensed under Iowa Code chapter 80A, or whose employment as a peace officer, correctional officer with the Iowa department of corrections, private security officer, bank messenger or other person transporting property of a value requiring security, or whose employment in police work reasonably justifies that person’s going armed. Property of value includes large quantities of cash transported in an armored car, negotiable instruments, gems, other high-value items transported by couriers, and other high-value property that may be vulnerable. Such a permit is valid only while the permitted person is engaged in the employment stated on the permit and while the person is traveling to and from that employment.

*“Qualifying on a firing range”* means successful completion of a course of live fire on a firing range under the supervision of an instructor certified by the National Rifle Association, the Iowa law enforcement academy, or another state’s department of public safety, state police department, or similar certifying body.

*“Renewal application”* means an application for an Iowa professional permit to carry weapons filed at least 30 days prior to the expiration of a currently held permit.

*“State employee”* means a person whose need to go armed arises out of employment by the state of Iowa. “State employee” includes a railroad special agent as described in Iowa Code chapter 80.

*“State of residence”* means the state in which an individual resides for the purposes of administering United States Code 18 U.S.C. § 921, et seq. An individual resides in a state if the individual is present in a state with the intention of making a home in that state. If an individual is on active duty as a member of the armed forces, the individual’s state of residence is the state in which the individual’s permanent duty station is located. An alien who is in the United States legally shall be considered to be a resident of a state only if the alien is residing in the state and has resided in the state for a period of at least 90 consecutive days prior to the date of application for an Iowa permit to carry weapons.

*“State of residence of active duty military personnel”* means the state of record for the purposes of administering United States Code 18 U.S.C. § 921, et seq., also known as the Gun Control Act of 1968. Specific Iowa examples include:

1. Iowa resident activated by the Iowa national guard – Iowa resident.
2. Iowa resident activated by a United States military reserve unit based in Iowa – Iowa resident.
3. Iowa resident activated by a non-Iowa national guard unit – resident of the state in which the national guard unit is based.
4. Iowa resident activated by a United States military reserve unit based outside Iowa – resident of the state in which the military reserve unit is based.
5. Iowa resident activated by any branch of the United States military – resident of the state in which the permanent duty station is located as shown on the person’s military orders. In most overseas deployments, the permanent duty station remains at the base in the United States from which the active duty member was deployed, although there are a few overseas permanent duty stations.
6. Nonresident of Iowa assigned to a permanent duty station in Iowa – Iowa resident.
7. Nonresident of Iowa who maintains a domicile in Iowa and who commutes daily to a permanent duty station in another state – Iowa resident and resident of the state in which the person’s permanent duty station is located.

*“Unlawful user of or addicted to any controlled substance”* means a person who uses a controlled substance and has lost the power of self-control with reference to the use of the controlled substance or any person who is a current user of a controlled substance in a manner other than as prescribed by a licensed physician. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct. A person may be an unlawful current user of a controlled substance even though the substance is not being used at the precise time the person applies for an Iowa permit to carry weapons or seeks to acquire a firearm or receives or possesses a firearm. An inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time, e.g., a conviction for use or possession of a controlled substance within the past year; multiple arrests for such offenses within the past five years if the most recent arrest occurred within the past year; or persons found through a drug test to use a controlled substance unlawfully, provided that the test was administered within the past year. For a current or former member of the armed forces, an inference of current use may be drawn from recent disciplinary or other administrative action based on confirmed drug use, e.g., court-martial conviction, nonjudicial punishment, or an administrative discharge based on drug use or drug rehabilitation failure.

**661—91.2(724) Forms.** The following forms, the use of which is required by provisions of this chapter, are provided by the commissioner to Iowa sheriffs:

1. Form WP1. Professional Permit to Carry Weapons
2. Form WP2. Nonprofessional Permit to Carry Weapons
3. Form WP3. Application for Annual Permit to Acquire Pistols or Revolvers
4. Form WP4. Annual Permit to Acquire Pistols or Revolvers
5. Form WP5. Application for Permit to Carry Weapons
6. Form WP6. Revocation/Cancellation of Permit to Carry/Permit to Acquire Weapons
7. Form WP7. Certified Peace Officer Permit to Carry Weapons
8. Form WP8. Reserve Peace Officer Permit to Carry Weapons
9. Form WP9. Authorization for Wallet-Size Permit to Carry Weapons, to be generated by the issuing officer including the type of permit, and, at a minimum, the individual identifiers of name and date of birth. A professional permit to carry weapons shall state the nature of employment requiring the holder to go armed.

**661—91.3(724) Federal and state prohibitions—possession, permit to carry weapons.**

**91.3(1)** United States Code 18 U.S.C. § 922(g) and § 922(n) prohibit the possession of firearms by any person:

- a. Who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year; or
- b. Who is a fugitive from justice; or
- c. Who is an unlawful user of or addicted to any controlled substance; or
- d. Who has been adjudicated as a mental defective or who has been committed to a mental institution; or
- e. Who, being an alien, is illegally or unlawfully in the United States. Persons lawfully admitted to the United States as immigrant or nonimmigrant aliens must have resided in Iowa for at least 90 continuous days before becoming eligible for an Iowa permit to carry weapons. Additionally, nonimmigrant aliens must display a current valid hunting license issued in any state; or
- f. Who has been discharged from the armed forces under dishonorable conditions; or
- g. Who, having been a citizen of the United States, has renounced the person’s citizenship; or
- h. Who is subject to a court order that:
  - (1) Was issued after a hearing for which such person received actual notice and at which such person had an opportunity to participate;

(2) Restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person or from engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(3) Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

*i.* Who has been convicted in any court of a misdemeanor crime of domestic violence; or

*j.* Who is under indictment for a crime punishable by imprisonment for a term exceeding one year.

**91.3(2)** Iowa Code chapter 724 prohibits the issuance of an Iowa professional permit to carry weapons to any person:

*a.* Who is younger than 18 years of age for a private security officer licensed by the Iowa department of public safety, or otherwise who is less than 21 years of age; or

*b.* Who is addicted to the use of alcohol; or

*c.* For whom probable cause exists to believe, based upon documented specific actions of the person, where at least one of the actions occurred within two years immediately preceding the date of the permit application, that the person is likely to use a weapon unlawfully or in such other manner as would endanger the person's self or others; or

*d.* Who has been convicted of a felony in a state or federal court, or who has been adjudicated delinquent on the basis of conduct that would constitute a felony if committed by an adult; or

*e.* Who is subject to a court order that:

(1) Was issued after a hearing for which such person received actual notice and at which such person had an opportunity to participate;

(2) Restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person or from engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(3) Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

*f.* Who has been convicted in any court of a misdemeanor crime of domestic violence; or

*g.* Who has, within the previous three years, been convicted of any serious or aggravated misdemeanor defined in Iowa Code chapter 708 not involving the use of a firearm or explosive.

**661—91.4(724) Application procedures for an Iowa professional permit to carry weapons.**

**91.4(1)** A nonresident of Iowa or a state employee who is required by employment to go armed may apply to the commissioner for a professional permit to carry weapons. The applicant shall comply with all of the following:

*a.* Submit a fully and accurately completed and signed application for permit to carry weapons.

*b.* Submit firearm training documentation. For a new application, training may have occurred at any time prior to the submission of the application. For a renewal application, training must have occurred within the 12-month period prior to the expiration date displayed on the applicant's current permit.

*c.* Submit the required fee:

(1) \$50 for a new application, or

(2) \$25 for a renewal application.

*d.* Display identification documentation as defined in rule 661—91.1(724) or provide a photocopy thereof.

**91.4(2)** The commissioner will return an incomplete application to the applicant.

**661—91.5(724) Issuance or denial of application for permit to carry weapons.**

**91.5(1)** Upon receipt of a completed application, the commissioner shall conduct a background check to determine that issuance of a permit to the applicant is not prohibited pursuant to rule 661—91.3(724).

**91.5(2)** Within 30 days, the commissioner shall approve or deny an application submitted pursuant to subrule 91.4(1). The commissioner's failure to act within 30 days of receipt of a complete application shall result in an application's being deemed to have been approved.

**91.5(3)** A permit issued pursuant to this chapter shall be delivered to the applicant by U.S. mail or in person at the request of the applicant.

**91.5(4)** In the event an application is denied pursuant to this chapter, the commissioner shall issue a written statement of the reasons for the denial.

**91.5(5)** The commissioner may conduct a background check annually on a person issued a permit to carry weapons pursuant to this chapter but such check shall not include a NICS inquiry.

**661—91.6(724) Suspension or revocation of permit to carry weapons.**

**91.6(1)** When the commissioner finds that a person who has been issued a permit to carry weapons has been arrested for a disqualifying offense or is the subject of proceedings that could lead to the person's ineligibility for such permit, the commissioner may immediately suspend the permit.

**91.6(2)** A permit holder shall be notified immediately of such suspension by personal service or certified mail. The suspension shall become effective upon the permit holder's receipt of such notice. If notified by personal service, the permit shall be surrendered to the person serving such notice for return to the commissioner. If notified by certified mail, the permit holder will be instructed to return the permit to the commissioner.

**91.6(3)** If the arrest or proceeding does not result in a disqualifying conviction or finding against the permit holder, the commissioner shall immediately reinstate the permit upon proof of the matter's final disposition and shall return the permit to the permit holder.

**91.6(4)** If the arrest or proceeding results in a disqualifying conviction or finding against the permit holder, the commissioner shall revoke the permit.

**661—91.7(724) Appeals.**

**91.7(1)** If the commissioner denies, suspends or revokes a professional permit to carry weapons for any reason other than the federal disqualifiers in subrule 91.3(1) or reasons in paragraph 91.3(2) "e" or "f," the applicant or permit holder may file an appeal with an administrative law judge by filing a copy of the denial, suspension, or revocation notice with a written statement that clearly states the applicant's reasons rebutting the denial, suspension, or revocation.

**91.7(2)** If the commissioner denies, suspends or revokes a professional permit to carry weapons solely for one or more of the ten federal disqualifiers in subrule 91.3(1) or reasons in paragraph 91.3(2) "e" or "f," the applicant or permit holder may pursue relief of the NICS determination pursuant to Public Law 103-159.

**91.7(3)** The outcome of proceedings conducted under subrule 91.7(2) shall be binding on the commissioner.

**661—91.8(724) Reports and remittance to the state.**

**91.8(1)** Each sheriff shall remit to the commissioner, by the seventh working day of the month that follows the month in which one or more permits to carry a weapon were issued, information about such permits, including the permit holder's name, date of birth, NICS transaction number, type of permit issued and the portion of the fee to be remitted to the department as required by the Iowa Code. The reporting of issued permits to carry a weapon shall be in a format designated for that purpose.

**91.8(2)** Fees for each reporting period shall be remitted by the sheriff and shall be in the form of a check made payable to Iowa Department of Public Safety.

**661—91.9(724) Offensive weapons as collector's items—method of classification.** An offensive weapon, other than a machine gun, shall be classified by the commissioner as a collector's item when the firearm is so defined as a curio or relic in 27 CFR 478.11 as published April 1, 2010, in the Code of Federal Regulations.

These rules are intended to implement Iowa Code chapter 724 as amended by 2010 Iowa Acts, Senate File 2357 and Senate File 2379.